63M-1-702 (Effective 07/01/14). Purpose.

(1) (a) The Legislature recognizes that the growth of new industry and expansion of existing industry requires a strong technology base, new ideas, concepts, innovations, and prototypes.

(b) Growth in industry frequently results from technological innovation generated by strong research institutions of higher education and by small businesses.

(c) Technical research in Utah's institutions of higher education should be enhanced and expanded, particularly in those areas targeted by the state for economic development.

(d) Most states enhance their research base by direct funding, usually on a matching basis.

(e) The purpose of this part is to catalyze and enhance the growth of these technologies by:

(i) encouraging interdisciplinary research activities in targeted areas;

(ii) facilitating the transition of these technologies out of the higher education environment into industry where the technologies can be used to enhance job creation; and

(iii) supporting the commercialization of technologies developed by small business to enhance job creation.

(f) The Legislature recognizes that one source of funding is to match state funds with federal funds and industrial support to provide and develop new technologies.

(2) The Legislature recommends that the governor consider matching the allocation of economic development funds for the Technology Commercialization and Innovation Program with industry and federal grants.

(3) (a) The Legislature recommends that the funds be allocated on a competitive basis:

(i) to the various institutions of higher education in the state;

(ii) to companies working in partnership with institutions of higher education to commercialize their technologies; and

(iii) to small businesses that are developing promising technologies.

(b) The funds made available should be used to support:

(i) interdisciplinary research in the Technology Commercialization and Innovation Program in technologies that are considered to have potential for economic development in the state and to help transition these technologies out of institutions of higher education and into industry; and

(ii) small businesses in commercializing their promising technologies that have the potential to increase economic development in the state.

Amended by Chapter 418, 2014 General Session

63M-1-703 (Effective 07/01/14). Definitions.

As used in this part:

(1) "Business team consultant" means an experienced technology executive, entrepreneur, or business person who:

(a) is recruited by the office through a request for proposal process to work directly with a college or university in the Technology Commercialization and Innovation

Program; and

(b) works with the institution to facilitate the transition of its technology into industry by assisting the institution in developing strategies, including spin out strategies when appropriate, and go-to-market plans, and identifying and working with potential customers and partners.

(2) "Direct license" means a written license agreement between a company and a Utah institution of higher education related to technology developed at the institution of higher education with the intent of commercializing the technology or facilitating its transition into industry.

(3) "Institution of higher education" means:

(a) a state institution of higher education as defined in Section 53B-3-102; or

(b) a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(4) "Licensee" means:

(a) a company that executes or is in the process of executing a direct license; or

(b) a sublicensee of the technology from a direct license.

(5) "Small business" means a business that:

(a) meets the size standards for the business's industry classification as identified by the United States Small Business Administration in 13 C.F.R. Sec. 121.201;

(b) is organized for profit;

(c) operates primarily within the United States;

(d) has a principal place of business in the state, including a manufacturing or service location; and

(e) is independently owned and operated.

(6) "Technology Commercialization and Innovation Program" means:

(a) a federal- and industry-supported cooperative research and development program based at an institution of higher education; or

(b) a federal- and state-supported program for funding technologically innovative small businesses.

Amended by Chapter 418, 2014 General Session

63M-1-704 (Effective 07/01/14). Administration -- Grants and loans.

(1) The Governor's Office of Economic Development shall administer this part.

(2) (a) (i) The office may award Technology Commercialization and Innovation Program grants or issue loans under this part to an applicant that is:

(A) an institution of higher education;

(B) a licensee; or

(C) a small business.

(ii) If loans are issued under Subsection (2)(a)(i), the Division of Finance may set up a fund or account as necessary for the proper accounting of the loans.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules for a process to determine whether an institution of higher education that receives a grant under this part must return the grant proceeds or

a portion of the grant proceeds if the technology that is developed with the grant proceeds is licensed to a licensee that:

(i) does not maintain a manufacturing or service location in the state from which the licensee or a sublicensee exploits the technology; or

(ii) initially maintains a manufacturing or service location in the state from which the licensee or a sublicensee exploits the technology, but within five years after issuance of the license the licensee or sublicensee transfers the manufacturing or service location for the technology to a location out of the state.

(c) A repayment by an institution of higher education of grant proceeds or a portion of the grant proceeds may only come from the proceeds of the license established between the licensee and the institution of higher education.

(d) (i) An applicant that is a licensee or small business that receives a grant under this part shall return the grant proceeds or a portion of the grant proceeds to the office if the applicant:

(A) does not maintain a manufacturing or service location in the state from which the applicant exploits the technology; or

(B) initially maintains a manufacturing or service location in the state from which the applicant exploits the technology, but within five years after issuance of the grant, the applicant transfers the manufacturing or service location for the technology to an out-of-state location.

(ii) A repayment by an applicant shall be prorated based on the number of full years the applicant operated in the state from the date of the awarded grant.

(iii) A repayment by a licensee that receives a grant may only come from the proceeds of the license to that licensee.

(3) (a) Funding allocations shall be made by the office with the advice of the board.

(b) Each proposal shall receive the best available outside review.

(4) (a) In considering each proposal, the office shall weigh technical merit, the level of matching funds from private and federal sources, and the potential for job creation and economic development.

(b) Proposals or consortia that combine and coordinate related research at two or more institutions of higher education shall be encouraged.

(5) The office shall review the activities and progress of grant recipients on a regular basis and, as part of the office's annual written report described in Section 63M-1-206, report on the accomplishments and direction of the Technology Commercialization and Innovation Program.

Amended by Chapter 371, 2014 General Session
Amended by Chapter 418, 2014 General Session
Amended by Chapter 418, 2014 General Session, (Coordination Clause)

63M-1-903 (Effective 09/02/14). Industrial Assistance Account created -- Uses -- Administrator duties -- Costs.

(1) There is created a restricted account within the General Fund known as the "Industrial Assistance Account" of which:

(a) up to 50% may be used in economically disadvantaged rural areas;

(b) up to 25% may be used to take timely advantage of economic opportunities as they arise;

(c) up to 4% may be used to promote business and economic development in rural areas of the state with the Business Expansion and Retention Initiative; and

(d) up to $3,000,000 may be used for the purpose of incubating technology solutions related to economic and workforce development.

(2) The administrator shall administer:

(a) the restricted account created under Subsection (1), under the policy direction of the board; and

(b) the Business Expansion and Retention Initiative for the rural areas of the state.

(3) The administrator may hire appropriate support staff to perform the duties required under this section.

(4) The cost of administering the restricted account shall be paid from money in the restricted account.

(5) Interest accrued from investment of money in the restricted account shall remain in the restricted account.

Amended by Chapter 435, 2014 General Session

63M-1-3501 (Effective 09/02/14). Title.

This part is known as the "Utah Small Business Jobs Act."

Enacted by Chapter 435, 2014 General Session

63M-1-3502 (Effective 09/02/14). Definitions.

As used in this part:

(1) "Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the entity specified.

(2) "Applicable percentage" means:

(a) 0% for the first two credit allowance dates;

(b) 12% for the next three credit allowance dates; and

(c) 11% for the next two credit allowance dates.

(3) "Community Development Financial Institutions Fund" means the fund created in 12 U.S.C. Sec. 4703.

(4) "Credit allowance date" means with respect to a qualified equity investment:

(a) the date on which the qualified equity investment is initially made; and

(b) each of the six anniversary dates of the date described in Subsection (4)(a).

(5) "Federal New Markets Tax Credit Program" means the program created under Section 45D, Internal Revenue Code.

(6) "Long-term debt security" means a debt instrument issued by a qualified community development entity:

(a) with an original maturity date of at least seven years from the date of its issuance; and

(b) with no repayment, amortization, or prepayment features before its original

maturity date.

(7) "Purchase price" means the amount paid to the qualified community development entity that issues a qualified equity investment for the qualified equity investment that may not exceed the amount of qualified equity investment authority certified pursuant to Section 63M-1-3503.

(8) (a) "Qualified active low-income community business" is as defined in Section 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses meeting the United States Small Business Administration size eligibility standards established in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is made.

(b) Notwithstanding Subsection (8)(a), "qualified active low-income community business" does not include a business that derives or projects to derive 15% or more of its annual revenue from the rental or sale of real estate, unless the business is controlled by or under common control with another business if the second business:

(i) does not derive or project to derive 15% or more of its annual revenue from the rental or sale of real estate; and

(ii) is the primary tenant of the real estate leased from the initial business.

(c) A business is considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the qualified community development entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the United States Small Business Administration size standards, throughout the entire period of the investment or loan.

(9) (a) "Qualified community development entity" is as defined in Section 45D, Internal Revenue Code, if the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department with respect to credits authorized by Section 45D, Internal Revenue Code, that includes Utah within the service area set forth in the allocation agreement.

(b) An entity may not be considered to be controlled by another entity solely as a result of the entity having made a direct or indirect equity investment in the other entity that earns tax credits under Section 45D, Internal Revenue Code, or in a similar state program.

(c) "Qualified community development entity" includes a subsidiary community development entity of a qualified community development entity.

(10) (a) "Qualified equity investment" means an equity investment in, or long-term debt security issued by, a qualified community development entity that:

(i) is acquired on or after September 2, 2014, at its original issuance solely in exchange for cash;

(ii) has at least 85% of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date; and

(iii) is designated by the qualified community development entity as a qualified equity investment and is certified by the office pursuant to Section 63M-1-3503.

(b) Notwithstanding Subsection (10)(a), "qualified equity investment" includes a

qualified equity investment that does not meet the provisions of Subsection (10)(a) if the investment was a qualified equity investment in the hands of a prior holder.

(11) "Qualified low-income community investment" means a capital or equity investment in, or a loan to, a qualified active low-income community business, except, with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of the business's affiliates, with the proceeds of qualified equity investments certified under Section 63M-1-3503 shall be $4,000,000, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized on the repaid or redeemed qualified low-income community investments.

(12) "Tax credit certificate" is a certificate issued by the office under Subsection 63M-1-3503(11) to an entity eligible for a tax credit under Section 59-9-107 that:

(a) lists the name of the entity eligible for a tax credit;

(b) lists the entity's taxpayer identification number;

(c) lists the amount of tax credit that the office determines the entity is eligible for the calendar year; and

(d) may include other information as determined by the office.

Enacted by Chapter 435, 2014 General Session

63M-1-3503 (Effective 09/02/14). Certification of qualified equity investments -- Issuance of tax credit related certificates.

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and as eligible for tax credits under Section 59-9-107 shall apply to the office. The office shall begin accepting applications on September 2, 2014. The qualified community development entity shall include the following in the qualified community development entity's application:

(a) evidence of the applicant's certification as a qualified community development entity, including evidence of the service area of the applicant that includes this state;

(b) a copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;

(c) a certificate executed by an executive officer of the applicant attesting that:

(i) the applicant or its controlling entity has received more than one allocation of qualified equity investment authority under the Federal New Markets Tax Credit Program; and

(ii) the allocation agreement submitted with the application remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund;

(d) a description of the proposed amount, structure, and purchaser of the qualified equity investment;

(e) examples of the types of qualified active low-income businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the Federal New Markets Tax Credit Program, except that when submitting an

application an applicant is not required to identify qualified active low-income community businesses in which the applicant will invest;

(f) the amount of qualified equity investment authority the applicant agrees to designate as a federal qualified equity investment under Section 45D, Internal Revenue Code, including a copy of the screen shot from the Community Development Financial Institutions Fund's Allocation Tracking System of the applicant's remaining federal qualified equity investment authority;

(g) if applicable, the refundable performance deposit required by Subsection 63M-1-3506(1);

(h) a copy of a certificate of qualified equity investment authority under another state's new markets tax credit program; and

(i) evidence that the applicant, its controlling entity, and subsidiary qualified community development entities of the controlling entity have collectively made at least $40,000,000 in qualified low-income community investments under the Federal New Markets Tax Credit Program and other state's new markets tax credit programs with a maximum qualified low-income community investment size of $4,000,000 per business.

(2) (a) Within 30 days after receipt of a completed application containing the information set forth in Subsection (1), including, if applicable, the refundable performance deposit, the office shall grant or deny the application in full or in part.

(b) If the office denies any part of the application, the office shall inform the applicant of the grounds for the denial. If the applicant provides additional information required by the office or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission.

(c) If the applicant fails to provide the information or complete its application within the 15-day period:

(i) the application is denied;

(ii) the applicant shall resubmit an application in full with a new submission date; and

(iii) the office shall return any refundable performance deposit required by Subsection 63M-1-3506(1).

(3) (a) If the application is complete, the office shall certify the proposed equity investment or long-term debt security as a qualified equity investment, subject to the limitation contained in Subsection (6).

(b) The office shall provide written notice of the certification to the qualified community development entity.

(4) The office shall certify qualified equity investments in the order applications are received by the office. Applications received on the same day are considered to have been received simultaneously.

(5) For applications that are complete and received on the same day, the office shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants as follows:

(a) First, the office shall certify applications by applicants that agree to designate qualified equity investments as federal qualified equity investments in accordance with Subsection (1)(f) in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in an application to be designated as federal

qualified equity investments to the total amount of qualified equity investments to be designated as federal qualified equity investments requested in all applications received on the same day.

(b) After complying with Subsection (5)(a), the office shall certify the qualified equity investments of all other applicants, including the remaining qualified equity investment authority requested by applicants not designated as federal qualified equity investments in accordance with Subsection (1)(f), in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in the applications to the total amount of qualified equity investments requested in all applications received on the same day.

(6) (a) The office shall certify $50,000,000 in qualified equity investments pursuant to this section. If a pending request cannot be fully certified due to this limit, the office shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

(b) If a qualified community development entity withdraws its request pursuant to Subsection (6)(a), the office shall return any refundable performance deposit required by Subsection 63M-1-3506(1).

(c) A partial certification does not decrease the amount of the refundable performance deposit required under Subsection 63M-1-3506(1).

(7) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or a subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify the office of the transfer with the notice set forth in Subsection (8) and include with the notice the information required in the application with respect to the transferee.

(8) (a) Within 45 days of the applicant receiving notice of certification, the qualified community development entity or any transferee under Subsection (7) shall:

(i) issue the qualified equity investment;

(ii) receive cash in the amount of the certified amount; and

(iii) if applicable, designate the required amount of qualified equity investment authority as federal qualified equity investments.

(b) The qualified community development entity or transferee under Subsection (7) shall provide the office with evidence of the receipt of the cash investment and designation of the qualified equity investment as a federal qualified equity investment within 50 days of the applicant receiving notice of certification.

(c) The certification under this section lapses and the qualified community development entity may not issue the qualified equity investment without reapplying to the office for certification if, within 45 days following receipt of the certification notice, the qualified community development entity or any transferee under Subsection (7) does not:

(i) receive the cash investment;

(ii) issue the qualified equity investment; and

(iii) if applicable, designate the required amount of qualified equity investment authority as federal qualified equity investments.

(d) A lapsed certification under this Subsection (8) reverts back to the office and shall be reissued as follows:

(i) first, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection (5)(a), if applicable;

(ii) second, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection (5)(b); and

(iii) after complying with Subsections (8)(d)(i) and (ii), in accordance with the application process.

(e) (i) The office shall:

(A) calculate an annual fee to be paid by each applicant certified pursuant to Subsection (3)(a), regardless of the number of transferees under Subsection (7), by dividing $100,000 by the number of applications certified pursuant to Subsection (3)(a); and

(B) notify each successful applicant of the amount of the annual fee.

(ii) The initial annual fee shall be due and payable to the office with the evidence of receipt of cash investment set forth in Subsection (8)(b). After the initial annual fee, an annual fee shall be due and payable to the office with each report submitted pursuant to Section 63M-1-3510.

(iii) An annual fee may not be required once a qualified community development entity together with all transferees under Subsection (7) have decertified all qualified equity investments in accordance with Subsection 63M-1-3507(2).

(iv) To maintain an aggregate annual fee of $100,000 for all qualified community development entities, the office shall recalculate the annual fee as needed upon:

(A) the lapse of any certification under Subsection (8)(c);

(B) the recapture of tax credits pursuant to Section 63M-1-3504; or

(C) the decertification of qualified equity investments pursuant to Subsection 63M-1-3507(2).

(v) An annual fee collected under this Subsection (8)(e) shall be deposited into the General Fund as a dedicated credit for use by the office to implement this part.

(9) A qualified community development entity that issues a debt instrument described in Subsection 63M-1-3502(6) may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under Section 45D, Internal Revenue Code, of the qualified community development entity for that period before giving effect to the interest expense of the long-term debt security. This Subsection (9) does not limit the holder of the debt instrument's ability to accelerate payments on the debt instrument in situations when the qualified community development entity has defaulted on covenants designed to ensure compliance with this part or Section 45D, Internal Revenue Code.

(10) (a) A qualified community development entity that issues qualified equity investments shall notify the office of the names of the entities that are eligible to use tax credits under this section and Section 59-9-107:

(i) pursuant to an allocation of tax credits;

(ii) pursuant to a change in allocation of tax credits; or

(iii) due to a transfer of a qualified equity investment.

(b) The office may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the form and content of the notice required

under this Subsection (10).

(11) (a) An entity may claim a tax credit under Section 59-9-107 against tax liability under Title 59, Chapter 9, Taxation of Admitted Insurers, if the entity:

(i) makes a qualified equity investment; and

(ii) obtains a tax credit certificate in accordance with Subsection (11)(b).

(b) For each calendar year, beginning with calendar year 2016, an entity is eligible for a tax credit under this section and Section 59-9-107, the office shall issue to the entity a tax credit certificate for use after January 1, 2017, and provide the State Tax Commission a copy of the tax credit certificate.

(c) On each credit allowance date of the qualified equity investment, the entity that made the qualified equity investment, or the subsequent holder of the qualified equity investment, may claim a portion of the tax credit during the calendar year that includes the credit allowance date.

(d) The office shall calculate the tax credit amount and the tax credit amount shall be equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the qualified community development entity for the qualified equity investment.

(e) A tax credit allowed to a partnership, limited liability company, or S-corporation shall be allocated to the partners, members, or shareholders of the partnership, limited liability company, or S-corporation for the partners', members', or shareholders' direct use in accordance with the provisions of any agreement among the partners, members, or shareholders.

(f) An entity may not sell a tax credit allowed under this section on the open market.

(12) (a) An entity that claims a tax credit under Section 59-9-107 and this section shall provide the office with a document that expressly directs and authorizes the State Tax Commission to disclose the entity's tax returns and other information concerning the entity that are required by the office and that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office.

(b) The office shall submit the document described in Subsection (12)(a) to the State Tax Commission.

(c) Upon receipt of the document described in Subsection (12)(a), the State Tax Commission shall provide the office with the information requested by the office that the entity authorized the State Tax Commission to provide to the office in the document described in Subsection (12)(a).

Enacted by Chapter 435, 2014 General Session

63M-1-3504 (Effective 09/02/14). Recapture.

(1) The office may recapture a tax credit from an entity that claimed the tax credit allowed under Section 59-9-107 on a return, if any of the following occur:

(a) If any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this part is recaptured under Section 45D, Internal Revenue Code, the office may recapture the tax credit in an amount that is proportionate to the federal recapture with respect to the qualified equity

investment.

(b) If the qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment before the seventh anniversary of the issuance of the qualified equity investment, the office may recapture an amount proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

(c) (i) If the qualified community development entity fails to invest an amount equal to 85% of the purchase price of the qualified equity investment in qualified low-income community investments in Utah within 12 months of the issuance of the qualified equity investment and maintains at least 85% of the level of investment in qualified low-income community investments in Utah until the last credit allowance date for the qualified equity investment, the office may recapture the tax credit.

(ii) For purposes of this part, an investment is considered held by a qualified community development entity even if the investment has been sold or repaid if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of the capital.

(iii) Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year.

(iv) A qualified community development entity is not required to reinvest capital returned from a qualified low-income community investment after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance.

(d) If a qualified community development entity makes a distribution or debt payment in violation of Subsection 63M-1-3507(1), the office may recapture the tax credit.

(e) If there is a violation of Section 63M-1-3509, the office may recapture the tax credit.

(2) A recaptured tax credit and the related qualified equity investment authority revert back to the office and shall be reissued:

(a) first, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection 63M-1-3503(5)(a);

(b) second, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection 63M-1-3503(5)(b); and

(c) after complying with Subsections (2)(a) and (b), in accordance with the application process.

Enacted by Chapter 435, 2014 General Session

63M-1-3505 (Effective 09/02/14). Notice of noncompliance.

Enforcement of a recapture provision under Subsection 63M-1-3504(1) is subject to a six-month cure period. The office may not recapture a tax credit until the office notifies the qualified community development entity of noncompliance and affords the qualified community development entity six months from the date of the notice to cure the noncompliance.

Enacted by Chapter 435, 2014 General Session

63M-1-3506 (Effective 09/02/14). Refundable performance deposit -- Small Business Jobs Performance Guarantee Account.

(1) (a) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and as eligible for tax credits under Section 59-9-107 shall pay a deposit in the amount of .5% of the amount of the equity investment or long-term debt security requested in an application to be certified as a qualified equity investment to the office for deposit into the Small Business Jobs Performance Guarantee Account.

(b) (i) There is created in the General Fund a restricted account known as the "Small Business Jobs Performance Guarantee Account" that consists of deposits made under Subsection (1)(a).

(ii) The Small Business Jobs Performance Guarantee Account does not earn interest.

(iii) At the end of a fiscal year, any amount in the Small Business Jobs Performance Guarantee Account that a qualified community development entity forfeits under this section is to be transferred to the General Fund.

(iv) The office shall work with the Division of Finance to ensure that money in the Small Business Jobs Performance Guarantee Account is properly accounted for at the end of each fiscal year.

(c) A qualified community development entity shall forfeit the deposit required under Subsection (1)(a) in its entirety if:

(i) the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified equity investments certified by the office and receive cash in the total amount certified under Section 63M-1-3503; or

(ii) the qualified community development entity or any subsidiary qualified community development entity that issues a qualified equity investment certified under this part fails to make qualified low-income community investments in qualified active low-income community businesses in Utah equal to at least 85% of the purchase price of the qualified equity investment by the second credit allowance date of such qualified equity investment.

(d) The six-month cure period established under Section 63M-1-3505 is not applicable to the forfeiture of a deposit under Subsection (1)(c).

(2) A deposit required under Subsection (1) shall be paid to the office and held in the Small Business Jobs Performance Guarantee Account until such time as compliance with this Subsection (2) is established. A qualified community development entity may request a refund of the deposit from the office no sooner than 30 days after the qualified community development entity and all transferees under Subsection

63M-1-3503(7) have invested 85% of the purchase price of the qualified equity investment authority certified by the office pursuant to Subsection 63M-1-3503(3). The office has 30 days to comply with the request for a refund or give notice of noncompliance.

Enacted by Chapter 435, 2014 General Session

63M-1-3507 (Effective 09/02/14). 150% investment requirement -- Ceasing of certification.

(1) (a) Once certified under Section 63M-1-3503, a qualified equity investment shall remain certified until all of the requirements of Subsection (2) have been met.

(b) Until such time as the qualified equity investments issued by a qualified community development entity are no longer certified, the qualified community development entity may not distribute to its equity holders or make cash payments on long-term debt securities that have been certified as qualified equity investments in an amount that exceeds the sum of:

(i) the cumulative operating income, as defined by regulations adopted under Section 45D, Internal Revenue Code, earned by the qualified community development entity since issuance of the qualified equity investment, before giving effect to any interest expense from long-term debt securities certified as qualified equity investments; and

(ii) 50% of the purchase price of the qualified equity investments issued by the qualified community development entity.

(2) Subject to the other provisions of this section, a qualified equity investment ceases to be certified when:

(a) it is beyond its seventh credit allowance date;

(b) the qualified community development entity issuing the qualified equity investment has been in compliance with Section 63M-1-3504 through its seventh credit allowance date, including any cures under Section 63M-1-3505;

(c) the qualified community development entity issuing such qualified equity investment has used the cash purchase of such qualified equity investment, together with capital returned, repaid, or redeemed or profits realized with qualified low-income community investments, to invest in qualified active low-income community businesses such that the total qualified low-income community investments made, cumulatively including reinvestments, exceeds 150% of the qualified equity investment; and

(d) the qualified community development complies with Subsection (4).

(3) For purposes of making the calculation under Subsection (2)(c), qualified low-income community investments to any one qualified active low-income community business, on a collective basis with its affiliates, in excess of $4,000,000 may not be included, unless such investments are made with capital returned or repaid from qualified low-income community investments made by the qualified community development entity in other qualified active low-income community businesses or interest earned on or profits realized from any qualified low-income community investments.

(4) A qualified community development entity shall file a request for ceasing certification of a qualified equity investment in a form, provided by the office, that

establishes that the qualified community development entity has met the requirements of Subsection (2) along with evidence supporting the request for ceasing certification. Subsection (2)(b) shall be considered to be met if no recapture action has been commenced by the office as of the seventh credit allowance date.

(5) (a) A request for ceasing certification may not be unreasonably denied and the office shall respond to the request within 30 days of the office receiving the request.

(b) Upon grant of a request for ceasing certification, the qualified community development entity is no longer subject to Section 63M-1-3510.

(c) If the request is denied for any reason, the office has the burden of proof in any administrative or legal proceeding that follows.

Enacted by Chapter 435, 2014 General Session

63M-1-3508 (Effective 09/02/14). Limitation on fees.

(1) A qualified community development entity or purchaser of a qualified equity investment may not pay to any qualified community development entity or affiliate of a qualified community development entity any fee in connection with any activity under this part before meeting the requirements of Subsection 63M-1-3507(2) with respect to all qualified equity investments issued by such qualified community development entity and its affiliates.

(2) Subsection (1) does not prohibit the allocation or distribution of income earned by a qualified community development entity or purchaser of a qualified equity investment to the qualified community development entity's or purchaser's equity owners or the payment of reasonable interest on amounts lent to a qualified community development entity or purchaser of a qualified equity investment.

Enacted by Chapter 435, 2014 General Session

63M-1-3509 (Effective 09/02/14). New capital requirement.

(1) A qualified active low-income community business that receives a qualified low-income community investment from a qualified community development entity that issues qualified equity investments under this part, or any affiliates of a qualified active low-income community business, may not directly or indirectly:

(a) own or have the right to acquire an ownership interest in a qualified community development entity or member or affiliate of a qualified community development entity, including a holder of a qualified equity investment issued by the qualified community development entity; or

(b) loan to or invest in a qualified community development entity or member or affiliate of a qualified community development entity, including a holder of a qualified equity investment issued by a qualified community development entity when the proceeds of the loan or investment are directly or indirectly used to fund or refinance the purchase of a qualified equity investment under this part.

(2) For purposes of this section, a qualified community development entity may not be considered an affiliate of a qualified active low-income community business solely as a result of its qualified low-income community investment in the business.

Enacted by Chapter 435, 2014 General Session

63M-1-3510 (Effective 09/02/14). Reporting.

(1) A qualified community development entity that issues qualified equity investments shall submit a report to the office within the first five business days after the first anniversary of the initial credit allowance date that provides documentation as to the investment of 85% of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in Utah. The report shall include:

(a) a bank statement of the qualified community development entity evidencing each qualified low-income community investment; and

(b) evidence that the business was a qualified active low-income community business at the time of the qualified low-income community investment.

(2) After the initial report under Subsection (1), a qualified community development entity shall submit an annual report to the office within 60 days of the beginning of the calendar year during the compliance period. An annual report is not due before the first anniversary of the initial credit allowance date. The annual report shall include the following:

(a) the number of employment positions created and retained as a result of qualified low-income community investments;

(b) the average annual salary of positions described in Subsection (2)(a); and

(c) certification from the qualified community development entity that the grounds for recapture under Section 63M-1-3504 have not occurred.

Enacted by Chapter 435, 2014 General Session

63M-1-3511 (Effective 09/02/14). Revenue impact assessment.

(1) Before making a qualified low-income community investment, a qualified community development entity shall submit to the office a revenue impact assessment prepared using a nationally recognized economic development model that demonstrates that the qualified low-income community investment will have a revenue positive impact on the state over 10 years against the 58% tax credit utilization over the same 10-year period.

(2) The office must notify the qualified community development entity within five business days if the qualified low-income community investment does not have a revenue positive impact on the state over 10 years against the 58% tax credit utilization over the same 10-year period using the revenue impact assessment submitted.

(3) If the office determines that the revenue impact assessment does not reflect a revenue positive qualified low-income community investment, the office may waive the requirement under this section if the office determines that the proposed qualified low-income community investment will further economic development.

Enacted by Chapter 435, 2014 General Session

63M-1-3512 (Effective 09/02/14). Scope of part.

This part applies only to a return or report originally due on or after September 2,

2014.

Enacted by Chapter 435, 2014 General Session